

# REPORT OF THE SUBCOMMITTEE ON PROFESSIONAL MEDICAL CONDUCT IN NEW YORK STATE\*

## COMMITTEE ON MEDICINE IN SOCIETY

The New York Academy of Medicine  
New York, New York

THE concern of the New York Academy of medicine with state regulation of professional medical conduct derives not only from its traditional commitment to the advancement of medical practice but from the part the Academy plays in the process. In 1975 the New York State Legislature established a State Board for Professional Medical Conduct in the Department of Health. The physician members of this board are appointed by the Commissioner of Health on the recommendation made by representatives of several medical organizations. The statute specifically cites the New York Academy of Medicine as a body empowered to make such recommendations. At the present time many members of the Board for Professional Medical Conduct have been recommended by the New York Academy of Medicine to the Commissioner of Health.

In 1979 a group of Fellows and staff of the Academy undertook a careful review of the process of professional medical discipline in New York State. A working group has met on numerous occasions. Its representatives have had active discussions about problems with the Commissioner of Health, staff members of the Board and Office of Professional Medical Conduct, representatives of other medical societies and Bar Associations. In an interim report prepared in July 1981, the working group concluded that, despite improvements resulting from the 1980 amendments to the statute, "numerous deficiencies in the process still exist. These include: inordinate delays in the hearing of cases and the writing of opinions, inadequate resources for investigators, too many steps in the procedure for appeals, insufficient delineation of the different responsibilities of lawyers, physicians, lay persons and administrators on the Board." The working group continued to study the process and actively urged corrective measures to improve the medical dis-

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\*Members of the Subcommittee on Professional Medical Conduct are Dr. Joseph Post, chairman, Dr. Frank Iaquinta, Dr. Cyril J. Jones, and Dr. David McNutt and Dr. Marvin Lieberman, as ex officio. This Report was approved by the Subcommittee on Wednesday, May 8, 1985.  
Approved by the Committee on Medicine in Society, May 20, 1985.  
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cipline program. In the last few years we have noticed an improvement in the staffing of the Board as well as in the allocation of greater resources. Nevertheless, the shortcomings listed above still exist.

In November 1984 the New York Academy of Medicine, through its Subcommittee on Professional Medical Conduct, chaired by Dr. Joseph Post, a member of the Board on Professional Medical Conduct, convened a seminar in cooperation with the New York State Department of Health to review how effectively the system of professional discipline deals with problems of physician misconduct. On February 25, 1985 the Council of the Academy approved the Subcommittee's statement responding to the proposal in the Governor's Executive Budget dealing with licensure fees. The seminar discussions as well as the previous deliberations of the Subcommittee provide a background for our recommendations.

In the February 25th resolution, the Council of the New York Academy of Medicine reacted to the proposal in the Governor's Executive Budget for a 30% increase in physicians' and other license fees regulated by the New York State Education and Health Departments. The budget had recommended that for the first time all license fees be placed in a Special Revenue Account to support the professional licensure and disciplinary process. It was our understanding that some 3.7 million dollars would have been taken from the Special Revenue Account and transferred to the General Fund of the State of New York to support the Office of Professional Medical Conduct in New York State in the Health Department. Because the amount of money to be allocated from earmarked funds would not have increased the support for the Professional Medical Conduct programs both within the New York State Health and Education Departments, the Academy of Medicine went on record with reservations about this proposal. Since others agreed with these reservations, the Governor's proposal was eliminated from the Budget by the legislature. Recently, the Governor submitted recommendations to the legislature to deal with the malpractice crisis in New York State. These would add to the responsibilities of the Office of Professional Medical Conduct in New York State.

We would endorse a proposal to increase physicians' license fees and to earmark such funding to support and expand the work of the Office of Professional Medical Conduct. But the amount earmarked must be sufficient to increase the allocation of support for professional discipline programs. We consider such legislation especially imperative given the proposed augmentation of functions within the Department recommended as part of the reform of the malpractice system. It may require twice the current level of support to

meet these new needs and to reduce the backlog of cases which has accumulated over the years. We are pleased to note that the current leadership of the Office of Professional Medical Conduct is committed and able; given adequate resources, we believe efforts to reduce the backlog and speed up the process of medical discipline would be productive.

#### ROLE OF THE BOARD OF REGENTS

Current procedures for reviewing allegations of professional medical misconduct require the following: 1) a panel of four physicians and one lay person to hold hearings into charges of misconduct, to make findings of fact and conclusions of law and to recommend disciplinary action, followed by 2) a review by the Commissioner of Health with recommendations that include findings of fact, rulings of law and a recommended penalty, then followed again by 3) the review of a three member Board of Regents Review Committee including findings of fact, conclusions of law and a recommended penalty with a final determination by 4) the full Board of Regents after its Professional Discipline Committee of the Board has considered Review Committee findings. The respondent and Counsel appear as well as a lawyer from the Department of Health before the Regents Review Committee and present oral argument. To describe this process as cumbersome and unwieldy is an understatement. Persuading the legislature to alter the role of the regents may be difficult. However, a process that would safeguard the due process rights of the respondent as well as the interests of the complainants and the public at large could be designed and could eliminate the unnecessary delay that currently takes place.

It is our recommendation that after the hearing panel issues its findings of fact and conclusion of law and a recommended disciplinary action that the matter then be reviewed by a committee chaired by the Commissioner of Health with two members of the Board of Regents issuing a final decision with a written opinion on the record. The existing rights of appeal to courts on matters of law would be preserved. The proposal suggested would include a substantial role in the process for the Commissioner of Health and citizen members on the Board of Regents. The Commissioner and the two regents should be guided by adequate legal staff in making their decision. Submission of briefs by opposing counsel and opportunity for appearances by respondents and appellants' attorneys should also be permitted. The proceedings should be on record. The final determination of this group should be issued in the form of a written opinion comparable to opinions issued by the courts and should include extensive reasoning to explain the decision.

The written opinions would provide a body of legal precedent which would be of great assistance to the Board, prosecutors, respondents' attorneys and the public at large on what constitutes professional misconduct and what are appropriate sanctions.

#### SIZE OF PANELS

We favor a reduction in the size of panels from the current four physicians and one lay person to three physicians and one lay person. Having fewer members on the panel would make the process of scheduling hearings much simpler. With three physicians and one lay person, the important role of the physicians in the process is acknowledged and the weight of lay participation would be increased.

#### PROBATION

We favor strengthening the process of surveillance usually undertaken by the Department of Education as well as improved communications between the Department of Education and the Department of Health. Additional investigators may be necessary for the Department of Education to monitor adherence to probation and suspension. A demonstration project should be entered into with professional medical societies to monitor aspects of this process. Specific recommendations for the terms of probation should be detailed in the final opinion.

#### SANCTIONS

We recommend that under the present system after the Commissioner of Health has acted to revoke a license, interim suspension should take place pending a final action by the Board of Regents. If our recommended two-step process is adopted, we would propose that such an interim revocation take place after the hearing panel has made its decision. Interim suspension of a license would encourage the respondent to cooperate in seeking the speediest final resolution of the case.

#### CONDUCT OF HEARINGS

Currently the panel's work is assisted by an administrative law judge who serves as an administrative officer and rules on all motions, procedures and other legal objections. In addition, the administrative officer drafts the con-

clusions on behalf of the hearing panel. The administrative officer does not vote on recommendations for disciplinary action. We endorse the continuation of that practice. The Office of Professional Medical Conduct has undertaken a worthwhile effort to provide potential chairmen of panels with special orientation programs. Such programs combined with the increasing experience that administrative law judges are developing in participating in hearings are making for a much more effective working relationship today than existed at the inception of the program. While due process is essential to the respondent, we urge firm action by the chairmen of panels and administrative officers to prevent needless objections and delay in the conduct of hearings.